

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5200 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KELVANI MANDAL DENAP

Versus

BHAVANIPRASAD K KORI

Appearance:

MR JS UNWALA for MR PK JANI for Petitioners
NOTICE NOT RECD BACK for Respondent No. 1
MS DARSHNA PANDIT, Ld. AGP for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/08/2000

ORAL JUDGEMENT

In this petition petitioners have challenged the judgement and order of the Gujarat Secondary Education Tribunal passed on 26-12-1989 in Application No.711/88 as modified by the order dated 5-9-1990 in so far as the petitioners are directed to pay the back-wages.

2. The service of the respondent no.1, who was serving as a peon was terminated on the footing that there was a deemed approval to the order of termination.

The order of termination was challenged before the Tribunal by the respondent no.1. The Tribunal, after perusing the record of the case, which it had called from the office of the District Education Officer, found that the proposal of the school was received in that office on 7th March, 1987. The District Education Officer was required to pass the order regarding the approval within a period of 45 (forty-five) days as per the provision of Section 36(2) of the Gujarat Secondary Education Act, 1972. The Tribunal, following the ratio of the decision in the case of Satsangi Shishuvihar Kelavani Trust and Others Vs. P.N. Patel and Others reported in 18 GLR 615 found that the order of the D.E.O. refusing to accord the approval to the proposal of dismissal was legal and valid and could not have been ignored by the school since there was no deemed approval. The Tribunal noted that no appeal was filed against the order of the D.E.O. by the school and that the school could not have acted on the footing that there was a deemed approval of the order of dismissal of the respondent no.1 from service. Even on merits the Tribunal found that the dismissal was not justified, observing that for charges like remaining absent for a few days from doing the work of a gardner, the extreme penalty of dismissal was not justified. This part of the order of the Tribunal is not challenged, but the consequential part of paying the respondent no.1 back-wages with effect from the date of the application is challenged. The direction to pay back-wages was purely consequential to the order setting aside the dismissal of the respondent no.1 and reinstating him in service, which has not been challenged. In granting the consequential relief, the Tribunal acted in lawful exercise of its jurisdiction and did not commit any error, much less error apparent on the face of the record.

3. In the revision application made by the petitioners one paragraph was ordered to be added to the order made on 26-12-1989 by which it was observed that the petitioner-school acted bonafide by proceeding on the footing that there was a deemed approval of the termination of the respondent no.1 and as during the interregnum period no other appointment was made, no question of double payment would arise and, therefore, Tribunal recommended to the Department to consider sympathetically the request of the petitioner-school for holding the salaries for the period between 11-8-1988 and 31-1-1990 as admissible for the purpose of grant. The D.E.O. was recommended to consider this question and pass appropriate orders. This part of the direction is obviously not the subject matter of challenge in this

petition. It appears that even the respondent authority has not challenged this direction. The learned Counsel for the petitioners states that he has learned that this recommendation of the Tribunal has not been accepted and grant is denied by some order that has been passed. That would, however, not constitute the subject matter of the present petition and it will be open for the petitioners to take recourse to law, if any adverse order is passed. The Tribunal's recommendations should ordinarily have been respected, if not contrary to any legal provision.

4. Since the Tribunal in making the part of the order, which is challenged in the present petition, has not committed any error and has made a legal and valid order, there is no warrant for interfering with the impugned portion of the order. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

11-8-2000 (R.K. Abichandani, J.)

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